

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D. C.

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Federal Communications Commission  
Office of the Secretary

In the Matter of  
Billed Party Preference  
for 0+ InterLATA calls

CC Docket No. 92-77

ORIGINAL  
FILE

COMMENTS OF THE STATE OF  
SOUTH CAROLINA DIVISION OF  
INFORMATION RESOURCE MANAGEMENT

The Division of Information Resource Management of the South Carolina Budget and Control Board ("DIRM"), by its attorneys and pursuant to the Commission's April 9, 1992 Notice of Proposed Rulemaking in the above-captioned proceeding ("Notice"), hereby submits its comments in opposition to the proposed "Billed Party" Preference ("BPP") plan and states the following:

I. STATEMENT OF INTEREST AND INTRODUCTION

The DIRM is a division of the South Carolina Budget and Control Board charged with procuring and overseeing the operation of telecommunications facilities and services for all state agencies and institutions, including placement of pay telephones at these locations. See S.C. Code Ann. § 1-11-430. In this capacity, DIRM enters into agreements with operator service providers ("OSPs") to handle operator assisted calls from these pay telephone locations. DIRM also contracts with OSPs to provide operator services from dormitory rooms located at state owned

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colleges and universities. The contracts, as described in detail below, produce substantial income for the state through commissions paid by the presubscribed carrier -- income that ultimately benefits the citizens of South Carolina -- income that would be lost with the implementation of BPP.

Perhaps more importantly, however, the massive costs of implementing a BPP plan will fall on ratepayers, including the citizens of South Carolina. The expenditure of such massive sums for a system that will likely result in increased consumer confusion is all the more unjustified given that Congress and the Commission have spent years developing a regulatory scheme to ensure what the Commission now claims BPP will accomplish -- the ability of consumers to access the carrier of their choice.

Pursuant to Telephone Operator Services Consumer Information Act of 1990, Pub.L. 101-435, 104 Stat. 986 (1990) ("TOSCIA") and the Commission's Rules established in Dockets 90-313 and 91-35, consumers are now in a position to make an informed choice of carrier, and to implement that choice by dialing an access code. For the Commission at this late date, and on the eve of the unblocking of 10XXX access to all carriers, to make a proposal that ignores the significant resources expended on this access code system is inconsistent with the Commission's mandate to serve the public interest.

## **II. THE COMMISSION'S CURRENT RULES ENSURE THAT CONSUMERS HAVE ACCESS TO THEIR CARRIER OF CHOICE.**

In creating a regulatory structure for operator services, Congress' and the Commission's guiding principle was to ensure

that consumers could access the carrier of their choice, regardless of the carrier to which the telephone was presubscribed. See Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2747 (1991); 47 U.S.C. § 226(e)(1); Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Notice of Proposed Rulemaking, 6 FCC Rcd 1448, 1449 (1991). After years of proceedings, the resulting TOSCIA and the implementing FCC rules have accomplished this task. End users must be informed of the presubscribed carrier by both posted notice, 47 C.F.R. § 64.703(b), and double branding of calls is required. 47 C.F.R. § 64.703(a)(1). Moreover, rate information must be provided upon request. 47 C.F.R. § 64.703(a)(3). If, however, end users opt not to utilize the presubscribed carrier, they may access the carrier of their choice by access code dialing. Access to all carriers by their "950" or "800" access codes must be unblocked,<sup>1</sup> 47 U.S.C. § 225(b)(1)(E); 47 C.F.R. § 64.704(a), and at many aggregator locations, "10XXX" access is available.<sup>2</sup> The Commission's timetable for "10XXX" unblocking ensures that such access will be ubiquitously available.

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<sup>1</sup> Moreover, all OSPs are required to establish "800" or "950" access codes. Policies and Rules Concerning Operator Service and Pay Telephone Compensation, 6 FCC Rcd 4736, 4744.

<sup>2</sup> As detailed in DIRM's March 31, 1992 Comments in Docket No. 90-313, college and university dormitory room telephones should not be considered aggregator locations subject to the Commission's "10XXX" unblocking requirement as these telephones are not "available to the public or transient users."

Development of this notice and access system has not been without cost to the operator services industry, and consequently to ratepayers. In addition to the resources expended through the years of proceedings, implementation of these consumer safeguards has been at significant expense. Labels had to be printed and placed at all public telephone locations; branding messages had to be recorded, and set up to be played twice for every call; rate charts had to be set up in such a manner that rate quotes can be provided quickly and accurately; and, access codes, where blocked, had to be unblocked. Significant advertising dollars have been spent educating consumers how to access the carrier of their choice. Despite these costs, there was agreement that they were necessary to ensure consumer choice of operator service carriers.

The regulatory framework for the provision of operator services is now, for the most part, in place and only minor issues remain to be resolved. End users can make informed choices as to the carrier they wish to handle their call, and, at the same time, competition within the industry and its associated benefits have continued to grow. It is ironic that now, as the Commission nears the conclusion of years of proceedings,<sup>3</sup> it has issued a BPP proposal that would moot all of the efforts and expenditures to date.

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<sup>3</sup> In fact, the Commission recently concluded that local exchange carriers are required to offer blocking and screening services designed to control fraudulent "10XXX" calling. See Public Notice, CC Docket No. 91-35, Issued June 25, 1992.

### **III. BILLED PARTY PREFERENCE WILL RESULT IN CONSUMER CONFUSION AND INCREASED COSTS.**

In its Notice the Commission characterizes BPP as "user friendly," Notice at 8, and states that "under billed party preference, callers would be able to make all of their operator-assisted calls on a 0+ basis, and they could do so with the knowledge that their call would be automatically handled by the OSP with which the billed party wishes to do business." Id. (emphasis added). Contrary to the Commission's position, BPP will not be ubiquitously available. If it is mandated, the result will be increased consumer confusion.

The Commission does not have jurisdiction over intrastate calls, and thus, even if BPP were implemented for interstate calls, there is no guarantee that states would adopt this plan for intrastate operator assisted calls.<sup>4</sup> In fact, given that many states have completed lengthy and costly operator services proceedings and have, in many cases, adopted rules that mirror the current federal scheme, they are unlikely to revisit these rules. Thus, BPP will not be available for all operator assisted calls, and end users will be unable to determine where BPP routing is available. The result will be consumer confusion and frustration in completing operator assisted calls.

In addition to the increased confusion that will result from BPP, implementation of such a plan will cost hundreds of millions

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<sup>4</sup> As it is technically feasible to segregate interstate and intrastate calls, the Commission cannot satisfy the legal standard for preemption. See Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

of dollars -- costs that ultimately will be borne by ratepayers. The BPP plan has no benefits that justify such an expenditure. Its primary benefit -- enabling callers to utilize the carrier of their choice -- already exists under the Commission's existing rules.<sup>5</sup>

#### **IV. THE ELIMINATION OF COMMISSION PAYMENTS IS NOT IN THE PUBLIC INTEREST.**

Under the current structure of the operator services industry, OSPs compete for presubscription contracts to serve public telephones. In exchange for such a presubscription agreement, OSPs pay commissions, generally based on the amount of 0+ traffic generated from a particular location. The State of South Carolina has been a beneficiary of these commission payments.

Following an open and competitive solicitation for proposals, DIRM entered into a contract with Telecom\*USA (now MCI)("MCI") to provide long distance operator services from administrative and dormitory telephones located at state owned colleges and universities. The agreement with MCI calls for the payment of commissions to the state based on total billed revenues. From July 1990 through July 1991, MCI has paid over \$863,000 in commissions to South Carolina, and its colleges and universities. From August 1991 through April 1992, commission payments of over

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<sup>5</sup> The vast majority of operator assisted calls are billed to the caller, as opposed to the called party or a third party. Under current rules, the caller can access the carrier of his or her choice by dialing an access code. See AT&T Supplemental Comments at 3 (stating that 80% of all operator assisted calls are billed to the calling party).

\$909,000 have been made. These revenues are used by the institutions for maintenance of, and upgrades to, their communications facilities. For instance, at the University of South Carolina ("USC") these funds have been used to enhance the main on-campus backbone network connecting the satellite campuses in Sumter, Spartanburg, Aiken, Conway, Beaufort, Lancaster, Union and Salkehatchie. These revenues have also been used to defray annual maintenance costs, and to stabilize student fees for telecommunications. Thus, the student telephone users obtain substantial and direct benefits from these commission payments.

DIRM has entered into a similar agreement with US Sprint Communications Company Limited Partnership ("Sprint") for operator services from the 1700 pay telephones located at state government facilities, including prison facilities, hospitals, government office buildings, and colleges and universities. Sprint pays the state commissions based on total billed minutes of use and operator surcharge revenues. The state receives over \$1.5 million annually in commissions from Sprint and an additional \$1.5 million annually from Southern Bell for local and intraLATA toll calls. These funds are used to offset administrative and operational expenses for telecommunications, and for programs designed to benefit the principal users of the service. See Minutes of State Budget and Control Board Meeting, Feb. 28, 1990, attached as Exhibit 2. Approximately 70% of these commissions are derived from pay telephones used by prison inmates, and thus, approximately 70% is used to fund inmate educational programs and recreational facilities.

These commission payments have already been eroded by "dial around" access code calls.<sup>6</sup> However, as the Commission recognizes, "[b]illed party preference would effectively eliminate OSP commissions on 0+ traffic." Notice at 13. Eliminating such commissions will not result in "better services" and "lower prices to the end users" as predicted by the Commission, or any significant consumer benefits.<sup>7</sup> Notice at 9. To the contrary, it will reduce service options and the number and quality of telephones available for public use. Commission payments provide an incentive for making pay telephones available; absent such an incentive, it is reasonable to anticipate a reduction in the number of available pay telephones. Moreover, state programs which have been funded by such commissions will suffer.

While commission payments may ultimately be passed on to end users, the rate impact of commission payments pales in comparison to the increases that will result from BPP. Estimates for BPP implementation range from \$150 million to \$560 million. Notice at 11. There is no doubt that the cost of such implementation will be passed on to ratepayers.

Further, whereas there currently exists a competitive operator services industry, implementation of BPP will, at the least, reduce the level of competition as small providers are

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<sup>6</sup> The revenues for the presubscribed carrier decrease as end users access alternative carriers by dial around codes. As a result, commission payments correspondingly decrease.

<sup>7</sup> The only benefit associated with BPP is that end users will not have to dial access codes to reach their carrier of choice. This does not justify the massive expenditures required to implement this plan.



forced from the marketplace. Consumers will then be deprived of the benefits of competition, which include lower rates.

Contrary to the Commission's position, commission payments benefit the public. The elimination of these payments is not a benefit of BPP. Rather, it is just another reason why BPP is not sound public policy.

**V. IF THE COMMISSION ADOPTS BILLED PARTY PREFERENCE, INMATE PAY TELEPHONES AT PRISON FACILITIES SHOULD BE EXEMPT.**

If, despite the overwhelming case in opposition to BPP, the Commission adopts such a plan, it must exempt inmate telephones at confinement facilities. Inclusion of such telephones is a recipe for widespread and massive fraud.

In providing telephone service to inmates, confinement institution administrators must balance the inmates' need for service against the institutions' need to regulate access to such service in order, inter alia, to avoid harassing calls to the general public and law enforcement officials and to avert fraudulent calls. Inmates have exhibited tremendous creativity in placing such calls when given unrestricted access to carriers, particularly when such access involves direct contact with a live operator. Attached hereto as Exhibit 2 is a report of Larry Kepfer, Co-Chairman of the National Toll Fraud Prevention Committee, regarding Industry Concerns with Prison Fraud.

In an effort to reduce this fraud, South Carolina requires that all inmate calls must be dialed collect, with the called party being billed for the call. The Commission has sanctioned this inmate telephone system by exempting providers of inmate

services from the access requirements adopted in Docket No. 91-35.  
Policies and Rules Concerning Operator Service Providers, 6 FCC  
2744, 2752 (1991).

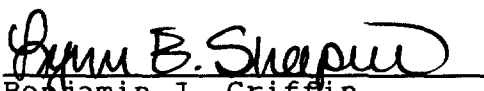
If BPP is adopted, a similar exemption is necessary to preserve the integrity of the prison system and to avoid the significant risk of fraudulent and harassing calls that the current system prevents.

**VI. CONCLUSION**

In light of the foregoing, DIRM respectfully requests that the Commission, recognizing that consumers can currently access the carrier of their choice, reverse its tentative conclusion that Billed Party Preference is in the public interest and relinquish any plan for the adoption thereof. If, however, the Commission adopts such a plan, it should specifically exempt inmate pay telephones at confinement institutions.

Respectfully submitted,

**DIVISION OF INFORMATION  
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Dated: July 7, 1992

**EXHIBIT 1**

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The Division presented proposed policies for dealing with these issues at the meeting. The policies proposed by the Division called for the commissions to be remitted to the respective agencies for use only to (a) offset administrative and operational expenses for telecommunications and/or (b) fund programs designed to benefit the principal users of the services.

Upon a motion by Mr. Morris, seconded by Senator Waddell, the Board received as information a Division of Information Resource Management report on how pay phone commission revenue is used by State agencies and institutions and established a policy on the disposition of those revenues and those from 0+ calls from State phones.

Information relating to this matter has been retained in these files and is identified as Exhibit 19.

**Executive Director: Foreign Travel (Regular #14)**

Upon a motion by Mr. Morris, seconded by Senator Waddell, the Board approved the following Clemson University foreign travel involving \$2,000 or more of State funds:

- (a) Dr. James K. Nelson, Jr., to London and Amsterdam during the March 13-27, 1990, period at an estimated cost of \$2,500 State funds; and
- (b) Robert J. Dufault to Taiwan during the April 30 - May 5, 1990, at an estimated cost of \$3,500 State funds.

Mr. McLellan did not vote on this motion.

At the request of Mr. McLellan, the Board directed staff to prepare a report on State agency foreign travel involving State funds approved during the current fiscal year and during the previous fiscal year.

Information relating to this matter has been retained in these files and is identified as Exhibit 20.

**Future Meeting**

The Board agreed to hold a regular meeting at 9:30 a.m. on Tuesday, March 13, 1990, in the Governor's conference room in the State House.

**EXHIBIT 2**

## INDUSTRY CONCERNS WITH PRISON FRAUD

LARRY KEPFER  
CO-CHAIRMAN OF THE NATIONAL  
TOLL FRAUD PREVENTION COMMITTEE

### I. OVERVIEW

Institutional toll fraud presently generates an annual loss of \$150 million according to the Communications Fraud Control Association (CFCA), a national association of IXCs, LECs, and law enforcement representatives. Included in the category of institutional toll fraud are educational facilities, military institutions, and prisons. Local exchange carriers and interexchange carriers have sought to minimize the fraud from inmate facilities through the provision of inmate service. Inmate service does not typically allow calls such as third party bill, access to Feature Group B (950) or Feature Group D (10XXX), 800 calls, 900 calls, 976 calls, direct dialed local calls, and credit card calls. Nonetheless, inmates still perpetrate fraud by using deceptive means to "Get By" the operator and access either services that require authorization codes (PINs or credit card numbers) or unsecured lines which give second dial tone.

### II. WAYS FRAUD IS PERPETRATED BY INMATES.

#### A. PBX FRAUD

An example of PBX fraud is where an inmate calls a hospital and tells the operator "collect call from Dr. Jones." The PBX operator then accepts the call. The inmate will then ask for a department (i.e. radiology). When the department answers, he will explain that he was directed to the wrong department and requests to be connected to the operator again. When the operator is reconnected, he then asks for an outside line and dials his fraudulent call.

#### B. UNSECURED LINES and SECURED WATS LINES

Many large businesses have WATS lines that are dial accessed by their personnel. Some of these lines have authorization codes associated (secured lines), others just return a second dial tone when they are accessed (unsecured lines). The inmates will dial these numbers, tell the operator the call is from "John" and when the conformation or second dial tone is returned, the inmate will send a burst of DTMF to kill the tone before the

operator can hear it. They, in turn, either disguise their voice or hand the phone to another inmate who accepts the call. The Operator drops off and the inmate population has access to the dial facilities. If the line is secured, the inmates may "hack" the code until a valid authorization code is found or obtain a code via outside sources. They will have the ability at this point to dial their call on unsecured lines.

#### C. FEATURE GROUP A

Feature Group A fraud is perpetrated like the secured WATS lines. The inmates get to the carriers' facilities using the deceptive means previously mentioned, then input a stolen PIN and dial their call. Some Feature Group A lines also have the ability to reoriginate calls by using the # key. On completion of a call, the calling party presses the # key and the Feature Group A line returns dial tone and another call can be made without reentering the PIN. Unlimited numbers of calls can be made in this manner. To the LEC, it appears as only one call was made.

### III. POTENTIAL HARM

#### A. CREDIT CARD CALLING

1. Inmates have many ingenious ways of illegally obtaining authorization codes, PINs, and Credit Card numbers. Allowing an inmate to make credit card calls would make the serving LEC and all IXCs very susceptible to fraud.
2. If an inmate were permitted to have a legitimate credit card, the card could easily be compromised within that facility. That inmate could sell calls to other inmates then report his card stolen.
3. Subscription Fraud (where a person orders service, runs up a large toll bill, then disappears without paying) would be a possibility where an outside source would order service under an assumed name, order a calling card, give the information to an inmate, then disappear. In the interim, the inmates could run up large volumes of fraud.

#### B. THIRD NUMBER BILLED

Third number billed calls would give an inmate an unlimited opportunity to place fraudulent calls with the

cooperation of friends at remote phones or other inmates. These calls could later be identified by the billed party as fraudulent at the expense of the LEC or IXC.

**C. LOCAL CALLING**

Allowing inmates to make local calls without operator control or without controlling the number of digits that they could dial, would give them access to local Feature Group A lines, dial access WATS lines, and also make the PBX fraud easily perpetrated. They would now be able to dial into the PBX without going through the operator and having a collect call accepted.

**D. 1+ SENT PAID**

Allowing 1+ sent paid traffic would also require controlling the number of digits the inmate could dial. With this stipulation, the potential for fraud would be minimized.

**E. 0+ SENT PAID**

Allowing 0+ sent paid traffic necessitates control of the 54 coin drop function at the coin set. Of course, this function is not under the operator's control, making 0+ sent paid calls totally unworkable from COCOT sets. Even at a LEC operated coin phone, an inmate could get the receiving caller at another coin set location to drop the coins at the receiving coin set. At those locations not utilizing electronic means to monitor and detect the point of origin of the coin deposit tones, the operator would be unaware that the coins were being deposited in the receiving set rather than by the inmate at the originating set. When a coin control signal is sent to collect the coins, it is applied only against the set originating the call. The receiving set would simply drop the coins back through to the coin return slot upon disconnect. When actual money in the collection box (originating set) is compared to the expected revenue (generated from AMA records), the shortage would be identified. Since it cannot be determined which calls created the shortage, recovery of this loss through rebill is impossible.

**F. 10XXX DIALING**

Allowing 10XXX dialing from inmate lines would make Interexchange Carriers, who cannot separate this type of traffic from POTS traffic, "fair game" for fraud. Some



interexchange carriers elected not to participate in balloting and allocation of BOC public phones because of inmate service and other services that require special screening.

#### IV. POSITIONS

##### A. NATIONAL TOLL FRAUD PREVENTION COMMITTEE POSITION

The Toll Fraud Prevention Committee, a national, industry-wide forum made up of all RBOCs, GTE, USTA, AT&T, MCI, US Sprint, Allnet, Bell Canada, Total-Tel USA, BellCore, Telus, and a number of other Interexchange Carriers, has had the Prison Fraud issue before them. This Committee has recommended that Inmate Service, regardless of the provider, allow 0+ Collect only. Deviance from this type of service will result in large amounts of fraud. TFPC issue 88-008 was agreement by the industry not to allow 10XXX dialing from inmate classes of service.

##### B. SUMMARY

The Communications Fraud Control Association (CFCA) estimates institutional fraud at \$150 million dollars annually. Because of this history, increased calling patterns made available to the inmates will increase the opportunities to commit telephone fraud. Secondly, when inmates perpetrate the fraud, there is not a means for restitution. Allowing inmates access to calling card services would allow them a much easier way of perpetrating the fraud. Allowing unrestricted local calling would give them access to services that would be compromised. It is strongly recommended that inmate service remain as 0+ Collect only. Additionally, 1+, 0-, and 00-- sent-paid calls should be allowed only when access to 800, 900, 976, 950 (FGB), 10XXX (FGD), and the dialing of additional digits after the initial call set up can be totally blocked.